# New Legal Issues for Counties and Landowner's with Wind Farming in Kansas



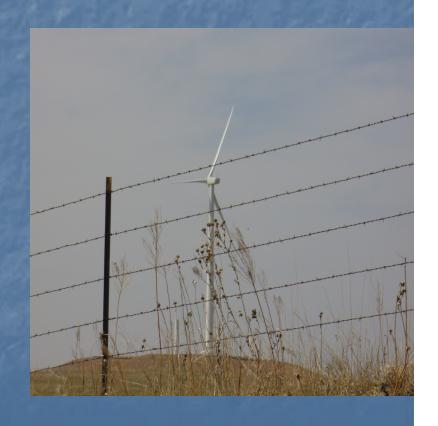
Jennifer R. O'Hare

### Smoky Hill Wind Project

- Project Developer TradeWind Energy,LLC
- Project Ownership Enel North America, Inc. the wholly owned subsidiary of Enel, SpA.
- Project Location Just north of I-70 on both sides of highway 14. In Lincoln and Ellsworth Counties
- Project Size 250 MWs (phase I/phase II)

# What do you do when a developer has interest in your county?

- Zoned?
- Who is the developer?
- Where is the wind farm to be located?
- No magic book for any county.



#### County Concerns

#### PILOT Agreement

- Payment in lieu of tax payments made to the County
- Statutory Authority
- Lincoln County "WEB" Fund
  - The proposal is a five person board consisting of a Board of County Commissioners, a member from Economic Development, and three members from each commissioner district appointed by the Lincoln County Board of County Commissioners

- Discrepancy between payments made by wind developers to counties:
  - Barber County
  - Gray County
  - Ford County
  - Butler County
  - Wichita County
  - Lincoln County \$400,000 1<sup>st</sup> year and \$300,000 per year renewal for 100.8 mw additional monies as mw increase
  - Ellsworth County same as Lincoln County

There is no rule regarding regulating authority regarding PILOT agreements and their amounts.



## Response by Counties

Ordinance – require notification to the County.

Zoning

Taxes

# Road Maintenance Agreement and the Impact on the County

- Easements/Permits
- Improvements to the Roads and Easements of the County
  - This issue continues to be a big concern for counties of any size.

# Landowner's What are we seeing?

- Similarities
  - Initial Lease Period
    - Pre development (2-7 years)
  - Construction Period (1 year)
  - Operation (25-150 years)

- Royalties 2% to 6%
  - Inflationary Provisions
  - Mix of royalty and graduated minimum payment

- Hunting Provisions
- Access
- Confidentiality
- Decommissioning
- Payments



Lease Agreements cover every issue over the life of the project.



### Development Agreement

- Difficult making decisions about issues
  5-7 years down the road.
- All-inclusive
  - PILOT
  - Road Maintenance
  - County Obligations

## Balancing Act

- Developer Needs
- Landowner Notice
- County Requirements
- Line Availability

Jennifer R. O'Hare Metz & O'Hare, Chtd. P.O. Box 36 Lincoln, KS 67455 (785) 524-4380 (785) 524-4466 Icattorney@nckcn.com